



2300 Lake Elmo Drive
Billings, MT 59105

NOTICE OF DECISION

October 26, 2001

TO: Environmental Quality Council
Director's Office, Dept. of Environmental Quality
Montana Fish, Wildlife & Parks

Director's Office
Parks Division
Fisheries Division
Wildlife Division
Regional Supervisors

Lands Section
Design & Construction
Legal Unit
Bobbi Keeler (when P-R, D-J project)

Montana Historical Society, State Preservation Office
Janet Ellis, Montana Audubon Council
Montana Wildlife Federation
Montana State Library
George Ochenski
Montana Environmental Information Center
Wayne Hirst, Montana State Parks Foundation
Montana Parks Association (land acquisition projects)
DNRC Area Manager, Southern Land Office
County Commissioners
Jim Kraft, Yellowstone County GSA

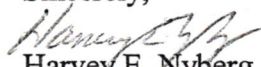
Ladies and Gentlemen:

A Draft Environmental Assessment (EA) was prepared for repair, reinforcement, and realignment of the middle of three **bendway weirs** originally constructed in the Yellowstone River near **Huntley** during 1998. The draft EA was circulated for 15 days and legal notices were published in the Billings Gazette and Helena Independent Record, as well as Montana's electronic bulletin board. Comments received and responses provided are enclosed.

The department has decided to issue a Stream Protection Act permit (enclosed) allowing the project to proceed under the conditions imposed.

This project is subject to appeal, which must be submitted to the FWP Director in writing, and postmarked within 30 days of the date on this decision notice. The appeal must specifically describe the basis for the appeal, explain how the appellant has previously commented to the department or participated in the decision-making process, and lay out how FWP might address the concerns in the appeal. If you have questions regarding this decision notice, please contact me at 247-2951 or hnyberg@state.mt.us.

Sincerely,


Harvey E. Nyberg
Regional Supervisor

Yellowstone County

COMMENTS AND RESPONSES

Comment 1: Who is paying for the modifications and for the preparation of the EA?

Yellowstone County and the Natural Resources Conservation Service are sharing the cost of the Huntley weir repair. If the applicants want to reveal the cost of the project, that is up to them. In situations where no state or federal funds are used to complete county or city projects, our legal unit determined that it is our responsibility to prepare the MEPA document. If our environmental analysis results in a conclusion that the project may have a significant impact upon the environment, we will ask the applicant to fund an Environmental Impact Statement. We were unaware of the federal funding when we prepared this EA, but see no reason not to continue the public process now that it has begun.

Comment 2: The EA is incomplete in its assessment of fisheries impacts.

There is no suitable habitat for brown trout spawning in the vicinity of the project. The substrate of the Yellowstone River at this site is generally too large, silt-laden, and armored. Little disturbance is anticipated at the Huntley site.

Comment 3: FWP didn't include a statutorily required electronic mail address to which the public may respond.

This oversight will be corrected for this and all future EA's circulated for public comment. Even for this EA, those people who already accessed it through our FWP website were led to the appropriate email address to respond.

Comment 4: The EA has only a 15-day comment period, which is not consistent with FWP's internal standard of 30 days.

The Huntley weir repair is a minor project that will involve little intrusion into the river if allowed to proceed within the next few weeks. The old riprap was deposited across the river and opposite the affected weir. It now deflects the flow into the weir and bank downstream. Because it is close to the far shore, it can be more easily removed while the river is very low. If the project is delayed until next spring, flows are likely to be higher than these near-record lows. Extending the comment period will increase the likelihood that heavy equipment must enter the water to remove old riprap and reinforce the weir, which increases environmental impacts.

The full, 30-day comment period will continue to be the Department standard. In the future, we will better explain in the cover letter why we opted for a shortened period and include a map and diagram.

Comment 5: The Montana Historical Society noted that there is a low likelihood that this project will impact cultural properties, and that a cultural resource inventory is unwarranted at this time. If cultural materials are discovered during the course of the project, however, they asked that their office be contacted, and the site be investigated.

Comment 6: The DNRC concluded that the project does not require a Land Use License as long as the length of the weir is not increased.

Region 5
2300 Lake Elmo Drive
Billings, MT 59105
October 26, 2001

Mr. Jim Kraft
Yellowstone County GSA
P.O. Box 35004
Billings, MT 59107

SUBJECT: Permit No. CO-04-01 R-5
Project Name: Huntley Weir Repair

Waterbody: Yellowstone R.
Water Code: 22-7015

Dear Jim:

Relative to the Montana Stream Preservation Act, the Department has completed our review of your proposed project on the Yellowstone River. The project has been approved if it is carried out in accordance with the following conditions:

1. All in-stream work shall be completed in an expeditious manner to avoid unnecessary impacts to the stream;
2. Extra precautions shall be taken to preserve existing riparian vegetation;
3. All construction activities performed in the stream and immediate vicinity shall be conducted in a manner to reduce in-stream turbidity along with minimizing disturbances to the streambed and/or streambank;
4. The use of machinery in the watercourse shall be avoided unless absolutely necessary. To prevent leaks of petroleum products into waterways, no defective equipment shall be operated in the watercourse or adjacent areas capable of contributing surface flow to the watercourse;
5. All streambank and adjacent areas disturbed by the construction activity shall be protected with temporary erosion control measures during the construction activities. These areas shall be reclaimed with long-term erosion control measures and revegetated immediately after construction;
6. Any excess material generated from this project must be disposed of above the ordinary high water mark and not in an area classified as a wetland;
7. Clearing of vegetation will be limited to that which is absolutely necessary for construction of the project.

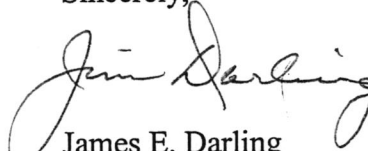
NOTE: This permit is valid for **one year** from the date of receipt.

— This project will cause a significant increase in turbidity. Therefore, the applicant must contact the Department of Environmental Quality to determine narrative conditions required to meet short-term water quality standards and protect aquatic biota.

x This project will not significantly increase turbidity if completed according to the conditions listed in the permit. Therefore, application to DEQ is not required.

Any modification or variance from the approved plan must receive prior approval from the Department.

Sincerely,



James E. Darling
Fisheries Manager

c: Fisheries Division, FWP